U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUN 0 4 2009
SRC 07 222 50751

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences. The petitioner seeks employment as a systems engineer/computer hardware engineer employed by Cisco Systems, Herndon, Virginia. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as an alien of exceptional ability, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel, a personal statement, and exhibits relating to his work.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director stated: "The record sufficiently demonstrates that the petitioner is eligible for classification as an alien of exceptional ability. The remaining issue in this matter is whether it has been established that a waiver of the job offer, and thus of a labor certification, would be in the national interest." We will first address the director's finding regarding the national interest waiver, and then we will address the issue of the petitioner's eligibility for the underlying immigrant classification.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the

Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

In an introductory letter, counsel stated that the petitioner "possesses over 15 years of experience in analyzing, designing and implementing Network, and Telecom Systems, and Systems Engineering as well as Consulting in the Information Technology and Telecom field." Counsel indicated that the initial submission included "[c]opies of expert opinion letters," but the record as it now stands does not show

any such letters with the initial submission. Counsel did not identify the authors of the letters or otherwise provide any details about the letters.

The petitioner provided the following description of his work at Cisco Systems:

> Current role is as a Specialist Systems-Engineer-3 for the DC-Metro Enterprise Region of the Mid-Atlantic Area, mostly in a pre-sale capacity. My immediate account base is a mix of large financial institutions such as World-Bank and IDB, USA-Today, Fannie-Mae, National Academy of Sciences and Higher-Ed Institutions and Government Integrators such as Lockheed Martin.
>
> My Current Primary areas of Consultation are: Optical Network Design, Storage Network Design, Campus-Switching, and Core-Routing (BGP, Multicast, MPLS).
>
> I represented the Mid-Atlantic Area in the Optical and Storage TLP's (Technology Leadership Programs). As a member of the TLP's, I authored 'Opportunity Description Documents' that helped drive the relevant Business-Units to develop features and Platforms to meet the market demands for these Advanced Technologies. As a TLP member, my main responsibility is to act as a conduit between the Customer, Cisco S.E Leadership Teams, and Cisco Corporate Business-Units.
>
> My responsibilities within the Cisco Enterprise East Area is foremost as a consultant and trusted advisor, to facilitate, design and solve complex Technical Business solutions, in a Pre-Sales capacity.
>
> As a Systems Engineer, I have received multiple awards from the Organization, for excellence in and out of the Field.

On December 14, 2007, the director issued a request for evidence (RFE), advising the petitioner that he "must sufficiently distinguish his work from that of others in the field if he is to show that he qualifies for a special exemption from [the job offer] requirement."

In response, counsel stated:

> We refer you to the attached supporting Expert Opinion Letter by [redacted] which explains the Internet Technology and Telecommunications Engineering and benefits to the national economy, and welfare of U.S. citizens, while also detailing [the petitioner's] significant contributions to the systems engineering as well as his future contribution to the United States as he continues to employ his expertise on projects with Cisco Systems, Inc.

(Evidentiary citation omitted.) The record shows that [redacted] is an associate professor of Journalism and Multimedia Arts at Duquesne University, Pittsburgh, Pennsylvania, who is responsible

for evaluating the credentials of prospective students and faculty members. He claimed experience in interactive media and industrial engineering, but claimed no specific expertise in the field of computer hardware engineering. He stated:

> [The petitioner] qualifies as an individual of extraordinary ability in the fields of Internet Technology and Telecommunications Engineering, possessing skills, knowledge, and achievements which would greatly serve the national interest of the United States. Moreover, it is my opinion, that the national interest of the United States would be adversely affected if he were required to obtain a labor certification, as he possesses the unique combination of professional achievement, scientific innovation, and leadership ability in the fields of Internet Technology and Telecommunications Engineering, to improve the technology and safety of Americans. These skills, unmatched by any U.S. worker with solely the minimum of credentials and experience, are vital and critical to the national interest of the United States, and hence, the national interest of the United States would be adversely affected if these skills were not put to good use for the benefit of the US and its citizens.
>
> . . . [H]e has been called upon to work with such high-profile, industry-leading clients as the Department of Energy, the Virginia Department of State, and the Library of Congress. Being called upon to hold high-level Engineer positions in prominent Telecommunications Engineering corporations, and to assist high-profile national and federal governmental agencies, clearly demonstrates his expertise and technical knowledge in Internet Technology and Telecommunications Engineering.
>
> . . . Few other experts in the fields of Internet Technology and Telecommunications Engineering possess the [same] high-level experience in directing internet and telecommunications networks, or the ability to optimize their engineering processes with marked, substantiated improvement. Therefore, [the petitioner's] unique combination of technical knowledge and leadership ability set him apart from other professionals in the field.

The record contains no first-hand evidence from the petitioner's past or present employers to demonstrate the "marked, substantiated improvement" that [redacted] claimed. [redacted] did not identify the evidence, if any, that he reviewed prior to writing his evaluation, nor did he explain how he came to know of the petitioner's experience and achievements. [redacted] simply declared that the petitioner is such a superior expert in his field that he should receive the national interest waiver.

The director denied the petition on August 2, 2008. The director found that [redacted] letter is not sufficient to establish the petitioner's eligibility for the waiver. The director noted:

> It is unknown how this witness is in a position to make assertions as to the petitioner's accomplishments and contributions to the field in such detail, including how he became

> aware of the petitioner's work, rather than being a product of solicitation from the petitioner in order to support his waiver request.

On appeal, counsel states:

> CISCO Corporation . . . tends [sic] to continue its relationship with [the petitioner] for the foreseeable future and does not intend to recruit anyone now. Therefore, there is no bonafide employment opportunity for a U.S. worker because the company does not intend to terminate [the petitioner's] service, nor to replace him with anyone else. Further, the company has no interest in recruiting anyone for this position inasmuch as they are highly satisfied with [the petitioner's] services. Therefore, there is no basis for any suggestion that the company ought to pursue a labor certification in order to establish a legal basis for it to file a petition for [the petitioner].

Counsel does not establish his authority to make these claims on Cisco's behalf. More importantly, the above argument does not establish that the labor certification process does not apply to the petitioner's position. The point of labor certification is not to establish a company's intent to employ a given alien (that intent is clear, because Cisco already employs the petitioner). Rather, labor certification exists to show that an alien has not displaced a qualified United States worker. The assertion that the petitioner already works for Cisco, and therefore the job is not available to any United States worker, cannot replace labor certification in this regard.

Counsel states: "We are unable to determine the specific content of your need for an assurance of [the petitioner's] future contributions to the national benefit. Moreover, we are prepared to write a contract . . . and we will provide a status and maintenance bond to you any reasonable amount to assure that it will be done." The petitioner's intentions are not at issue; the petitioner cannot secure the approval of the petition simply by executing a contract, promising to benefit the United States. The issue is whether the petitioner's past achievements justify the claim that the petitioner will benefit the United States to a degree that would justify a waiver.

Regarding the director's assertion that engaging in a profession does not automatically entitle an alien to the waiver, and that Congress created no blanket waiver for the petitioner's occupation, counsel claims "there is nothing in the legislative history or the language of the statute to justify these conclusions." We dispute counsel's assertion. The language of the statute is clear. Section 203(b)(2)(A) of the Act established an immigrant classification for aliens of exceptional ability in the sciences, arts or business, and members of the professions holding advanced degrees, "whose services . . . are sought by an employer in the United States." This establishes that a job offer is a standard requirement of the classification.

Regarding the issue of blanket waivers for a given occupation, the initial statutory language did not indicate that any such blanket waivers existed. Subsequently, after the publication of *Matter of New York State Dept. of Transportation* in 1998, Congress enacted section 203(b)(2)(B)(ii) of the Act, which

made the waiver available to certain alien physicians. This creation of a specified blanket waiver supports our holding that, prior to that amendment, no blanket waiver existed.

A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987). If the original statute already established blanket waivers, then there would have been no need to enact further legislation to create such a waiver for certain physicians.

Congress is presumed to be aware of existing administrative and judicial interpretations. *See Lorillard v. Pons*, 434 U.S. 575, 580 (1978). *Matter of New York State Dept. of Transportation* established the administrative interpretation that no blanket waivers existed, and that aliens are instead to be judged by their individual records of accomplishment. At that point, Congress could have amended the Act in countless ways in order to overrule the precedent decision, or to clarify the original intent of Congress with regard to the waiver. Instead, Congress made only one change, amending the Act to codify a blanket waiver for certain physicians. Congress also had the power to create a similar waiver for computer hardware engineers, but it did not do so. We take this as evidence that Congress did not intend for the national interest waiver to apply automatically to aliens in the petitioner's occupation.

Counsel contends that the petitioner "would have been eligible for the [now obsolete] third preference category as it then existed. . . . Therefore, it would have been in the national interest that he be exempted from the job offer requirement because the statute then provided for it." Counsel's logic here is not entirely clear. Counsel's conjectural claims about the expected approval of a hypothetical third preference petition are without force in this proceeding. We are not adjudicating a third preference claim under the old legislative scheme. We are adjudicating a petition under the law as it now exists. Lost amidst counsel's speculation about Congressional intent is Congress's obviously intentional elimination of the old third preference classification.

Counsel asks, rhetorically, "What distinguishes [the petitioner] from other U.S. Workers with comparable professional qualifications?" and answers: "the US increasingly will benefit from citizens with foreign language skills and background in order to stay competitive as a world Economic leader." This is not an argument specific to the petitioner. It is a general assertion that the United States benefits from a culturally diverse work force. It is absurd to suggest that Congress intended to exempt aliens with "foreign language skills and background" from the labor certification requirement, because most aliens possess "foreign language skills" and all of them, by definition, have a "foreign . . . background."

Turning to the petitioner's qualifications and achievements, counsel notes that the petitioner has provided services to high-profile clients, including federal government entities such as the "Department of Energy, Department of State, Library of Congress and the Army." Providing contract services to a prestigious or prominent clientele does not necessarily convey comparable prestige or prominence to the contractor. It is routine for a corporation or agency to rely on outside contractors to provide services outside of the expertise of its own employees. Also, it is logical that a large corporation or agency would rely on a substantial number of contractors. The burden is on the petitioner to show that the

contract services he has provided have been especially important, and that his personal involvement in these projects serves the national interest. It cannot suffice for the petitioner simply to list his clients.

The petitioner submits documentation regarding some of his projects, such as a system upgrade at the George Washington University and "Packet Telephony and Mobility for Red Cross Disaster Services." This information describes what the petitioner does, but it does not distinguish him from other workers in the same specialty.

The appeal includes a "Statement of Intent," digitally signed by the petitioner and submitted through counsel. The petitioner makes several claims but offers no documentary support for those claims. For example, he asserts that he has "significantly contributed to the preparedness of Cyber-security for U.S. security by bringing my extensive knowledge in Internet Security." The petitioner submitted no corroborating documents or statements, or even verifiable details to support this vague assertion. The documents submitted on appeal show that security is one facet of the petitioner's prior work, but the documents do not show that the petitioner's achievements in this regard stand out compared to the work of other qualified workers in the same field.

The petitioner states that his "knowledge will serve organizations through consultancy services" and that he "can affect the strategic direction of an organization; enable new ways of operating and above all serve as a trusted member of any organization's top management team to help exploit information technology effectively." The petitioner has established that he is a competent computer engineer, but he has not established that his past record of achievement justifies a finding that he warrants a national interest waiver. The oft-repeated observation that he has over fifteen years of experience in the field is not sufficient in this regard. Experience alone does not earn eligibility for the waiver.

For the above reasons, we agree with the director's finding that the petitioner has not shown that he qualifies for the national interest waiver.

Additionally, beyond the director's decision, the record shows an additional issue of concern. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In the initial filing, counsel did not clearly indicate whether the petitioner seeks classification as a member of the professions holding an advanced degree, or as an alien of exceptional ability in the sciences, arts or business. Therefore, in the December 14, 2007 RFE, the director instructed the petitioner to submit either: (1) evidence of an advanced degree; (2) evidence of a bachelor's degree plus five years of progressive post-baccalaureate experience in the field; or (3) evidence of exceptional ability (to be discussed in further detail below).

In response, counsel stated that the petitioner "qualifies for this classification by holding the equivalent of an advanced degree." The factors counsel cited as "the equivalent of an advanced degree" (such as the petitioner's salary), however, pertain to exceptional ability rather than an advanced degree. The USCIS regulation at 8 C.F.R. § 204.5(k)(2) strictly defines the term "advanced degree":

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

8 C.F.R. § 204.5(k)(3)(i)(B) requires that, in the absence of an actual advanced degree, a petitioner seeking to establish the equivalent of such a degree must submit "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." Evidence in any other form cannot represent "the equivalent of an advanced degree." The petitioner does not claim to hold a United States baccalaureate degree or any foreign degree that is equivalent to a United States baccalaureate degree. There is no evidence that the petitioner's two-year diploma from a North Carolina technical school is generally recognized as a baccalaureate degree.

Instead, counsel has asserted that the petitioner qualifies for classification as an alien of exceptional ability. Counsel did not specify whether the petitioner's claimed exceptional ability lay in the sciences, arts, or business. The petitioner's field of computer engineering appears most readily to fall under the heading of the sciences.

The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. We note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below. Qualifications possessed by all or most workers in a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every qualified physician has a college degree and a license or certification, but it defies logic to claim that every physician therefore shows "exceptional" traits.

Counsel claimed that the petitioner meets four of the six regulatory criteria. Failure to meet any two of these four claimed criteria would require a finding that the petitioner has not established eligibility as an alien of exceptional ability in the sciences.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A)

The petitioner claims to have attended North Carolina State University from 1986 to 1988, but he claims no degree from that institution, and the record contains no evidence from the university to show that he ever completed a course of study there.

The petitioner submitted a copy of a two-year diploma in Computer Technology from ECPI Computer Institute. As we have explained above, we will not accept a diploma alone, devoid of context, as automatic evidence of exceptional ability. The record does not indicate that a two-year course of study at a vocational or technical school conveys a degree of expertise significantly above that ordinarily encountered among workers in the petitioner's field.

The Form I-140 petition indicates that the Standard Occupational Classification (SOC) Code of the petitioner's occupation, computer hardware engineer, is 17-2061. The Bureau of Labor Statistics' Occupational Information Network (O*NET) provides the following breakdown of the educational qualifications of computer hardware engineers:

Percentage of respondents	Educational level attained
70%	Bachelor's degree or higher
23%	Some college
7%	High school or less[1]

The above information indicates that a substantial majority of computer hardware engineers have at least a bachelor's degree. The beneficiary's educational qualifications, therefore, fall below the average in his specialty. We cannot find that his two-year technical school diploma indicates exceptional ability in a field where most of his peers have completed four or more years of university-level education.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

The petitioner has satisfied this criterion by supplying employer letters attesting to his employment at Nortel Government Systems from June 1997 to June 1999, and at Cisco Systems, Inc., from June 1999 to the date of filing in July 2007.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D)

[1] Source: http://online.onetcenter.org/link/details/17-2061.00 (visited June 2, 2009; printout added to record).

A letter from a Cisco official indicates that the petitioner "currently earns an annual base salary of USD 118,301.22." Counsel asserted that this letter "demonstrates that [the petitioner] has commanded and will command a high salary."

According to O*NET, cited previously, the 2007 median wage for computer hardware engineers was $91,860 per year. The petitioner's salary exceeds the median by $26,441.22, nearly 29% higher than the median.

The available evidence indicates that the petitioner satisfies this criterion.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E)

Counsel asserted that the petitioner meets this criterion because he is "a member of several industry related organizations." Counsel named only two such organizations: the Storage Networking Industry Association (SNIA) and the Society of Satellite Professionals International (SSPI).

The petitioner submitted a printout from http://www.snia.org, which reads, in part:

> COMPANY REPRESENTATIVE SIGN UP
>
> This is where employees of SNIA Corporate Member Companies can setup a User Account ID and Password to access the SNIA MEMBER COMMUNITY.
>
> Done: Account Application Received
>
> Status Success
> You now have an account for this site. You will receive instructions on how to log into the members area by email.
>
> Company Information
>
> Company Cisco Systems

The above information does not indicate that the petitioner is individually a SNIA member. Rather, Cisco Systems is a "Corporate Member Company," and the petitioner is entitled to an account as a Cisco employee. The petitioner submitted no evidence that SNIA admits individuals, not just corporations, as members.

It is very significant that the printout is dated January 11, 2008, six months after the petition's filing date and nearly a month after the director issued the RFE. The petitioner's submission of a "Company Representative Sign Up" printout dated January 2008 suggests that the petitioner signed up for a SNIA account in order to create evidence of membership in a professional association.

A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

As evidence of his SSPI membership, the petitioner submitted a printout of an electronic mail message, informing the petitioner that his membership entitled him to a discounted registration fee for a February 2008 exhibition. The message is dated January 14, 2008, and therefore it is not evidence that the petitioner was already an SSPI member when he filed the petition in July 2007.

Also, the petitioner submitted no evidence of SSPI's membership requirements. It is, therefore, not possible to determine from the record whether SSPI membership is a mark of distinction, or is available to anyone who applies and pays the proper fee.

For the above reasons, we find that the petitioner has not satisfied this criterion.

We find that the petitioner has satisfied only two of the four regulatory criteria that the petitioner claims to have met. Therefore, the evidence of record is not sufficient for us to agree with the director's finding that the petitioner qualifies as an alien of exceptional ability in the sciences.

While our finding overturns the director's finding in this regard, it has no effect on the ultimate outcome of the appeal. For reasons already explained, we would have dismissed the appeal even without examining the question of the petitioner's eligibility for classification as an alien of exceptional ability.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.